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LANDLORD AND TENANT — BREACH OF LEASE—DAMAGES—PROFITS.—The plaintiff leased land to the defendants who were to plant it to beans and to share crop with the plaintiff, and upon the defendant's failure to plant in time for a crop the plaintiff brought suit for breach of contract. *Held,* the plaintiff could recover the profits which ordinarily and naturally in the usual course of things would have been derived from the defendant's performance of their contract. *Parkinson* v. *Langdon* (Dis. Ct. of App., Cal., 1918), 171 Pac. 710.

The case raises the question as to what should be the measure of damages for the breach of contract, the subject matter of which is the use or occupation of lands or buildings. Should it be the rental value during the period involved, or the interest for that time on the value of the property, or the profits which ordinarily might have been derived from its use? In a very few instances has the interest on the investment been taken as a measure of damages and then for the reason that it was impossible to find a true rental value. *N. Y., etc., Mining Syndicate* v. *Fraser,* 130 U. S. 611; *Allis* v. *McLean,* 48 Mich. 428. Rental value and not profits would seem to be the usual measure of damages for breach of covenants to lease, or of contracts and covenants with relation to property. *Griffin* v. *Colver,* 16 N. Y. 489; *Wright* v. *Mulvaney,* 78 Wis. 89; *Hodges* v. *Fries,* 34 Fla. 63. Profits may be recovered where they were an element of the contract; if not speculative or uncertain. *Poposkey* v. *Munkwitz,* 68 Wis. 322; *Dennis* v. *Maxfield,* 92 Mass. 138 (10 Allen). The direct fruit of a contract for tenancy on shares is a share of the profits and such profits are recoverable. *Wolf* v. *Studebaker,* 65 Pa. 459; *Hoy* v. *Gronoble,* 34 Pa. 9; *Taylor* v. *Bradley,* 39 N. Y. 129. Certainty being the standard, rental value has been considered by the courts to be the most certain, interest on investment less certain and profits the least certain measure of damages. If it can be said that profits are a certain measure of damages in ordinary cases of tenancy on shares where no specification is made as to the kind of crops which are to be raised; then it is clear that in the principal case profits are a more certain measure of damages, and the proper standard to be employed, since it was agreed between the parties that a certain specified staple crop was to be raised. This fact made it much less difficult to determine the exact damages which resulted from the breach of the contract and made the case a particularly appropriate one for the application of the profit standard.

LANDLORD AND TENANT—FORCIBLE ENTRY—WHAT CONSTITUTES FORCE.—Under a writ of restitution, the defendant came to the dwelling of the plaintiff, his tenant, to throw him out. The writ was void because of irregularities in the trial at which it was obtained. The tenancy had already terminated. Defendant gained admission by a request to look at the water pipes in the building, then, with the assistance of a deputy sheriff, and under the alleged authority of this void writ, removed the plaintiff's belongings. Plaintiff sued under the statute against forcible entries. Defendant claimed that his entry was peaceable. *Held,* for plaintiff, the entry was obtained through

strategy and fraud, and was forcible. *Gallant* v. *Miles,* (Mich. 1918), 166 N. W. 1009.

At common law a landlord could enter, a tenancy having expired, and take possession by force. Statutes soon did away with this privilege. See *Hyatt* v. *Wood,* 4 Johns (N. Y.) 150. There are two fundamental theories as to the purpose underlying these statutes, which lead to diverse definitions of the meaning of forcible and peaceable under them. The first of these theories is that the object of the statute is to prevent riotous and forcible measures in breach of the peace. *Fults* v. *Munro,* 202 N. Y. 34. Under such a view, the statute is interpreted to allow the landlord a broad scope for operations in retaking possession. An entry in the absence of the tenant was thus held peaceable, in *Brooks* v. *Brooks,* 84 N. J. L. 210. And a landlord was allowed to break in through a trap door, forcing boards in it, on the grounds that he had committed a mere trespass, without threats of personal violence, in *Hammond Savings & Trust Co.* v. *Boney,* 61 Ind. App. 295. Where this notion of the reason for the law obtains, the line is generally drawn that, in addition to a mere trespass, such words, circumstances, or actions as have a natural tendency to excite fear or apprehension of danger, are necessary to make an entry forcible. *Butts* v. *Voorhees,* 13 N. J. L. 13. The other underlying theory as to the reason for the statutes against forcible entries is that they are designed to prevent people from taking the law into their own hands. *Mitchell* v. *Davis,* 23 Cal. 381. Under this view, any entry without due legal formality, however quiet, is forcible. *Seals* v. *Williams,* 80 Miss. 234. An entry during the tenant's absence was held forcible. *Wilson* v. *Campbell,* 75 Kan. 159. Michigan seems to have held this second view consistently. In *Seitz* v. *Miles,* 16 Mich. 456, where the situation was very like that of the principal case, an entry under an invalid writ was held forcible. In *McIntyre* v. *Murphy,* 153 Mich. 342, an entry by stealth was held forcible. This case is cited and relied on by the principal case. While the early legislatures probably sought, by forcible entry statutes, to preserve the peace, the tendency today seems to aim in the other direction as well; that an individual has not the right to make himself judge, jury, and hangman in his own cause.

MALICIOUS PROSECUTION—CIVIL ACTION—ABSENCE OF ARREST OR SEIZURE. —Defendant in the present suit had, without probable cause, maliciously, and unsuccessfully, caused a civil action to be maintained by third parties against the present plaintiff. There had been, however, no arrest of the person or seizure of the property of the present plaintiff. In the present action it was *held* that the absence thereof was no defence to this suit for malicious prosecution, *Peerson* v. *Ashcraft Cotton Mills* (Ala. 1918), 78 So. 204.

In England the Statute of Marlbridge, 52 Henry III, c. 6, anno 1267, gave the successful defendant his costs, and, if the suit was found to have been instituted maliciously, he was also awarded damages. After this it was necessary, in a suit for malicious prosecution, to allege some special grievance, as arrest of the person or seizure of property, *Savil* v. *Roberts,* 1 Salk.